

SUPERIOR COURT
OF THE
STATE OF DELAWARE

WILLIAM C. CARPENTER, JR.
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 NORTH KING STREET, SUITE 10400
WILMINGTON, DE 19801-3733
TELEPHONE (302) 255-0670

June 20, 2006

Victoria R. Witherell, Esquire
Department of Justice
820 N. French Street
Wilmington, DE 19801

Joseph A. Hurley, Esquire
1215 King Street
Wilmington, DE 19801

RE: State of Delaware v. Robert D. Fullerton
ID No. 0410000810

Dear Counsel:

The defendant has filed a Motion for Judgment of Acquittal as well as a Motion for New Trial as a result of the jury finding the defendant guilty on April 26, 2006. The Court finds there was sufficient evidence for which a reasonable jury could find the defendant guilty of the Possession of a Deadly Weapon by a Person Prohibited and Underage Consumption of Alcohol, and therefore the Motion for Judgment of Acquittal Notwithstanding the Verdict is denied.

This case began when the police received a complaint of an individual firing a weapon in a residential area. Upon responding, the police obtained a description of the vehicle from which the shots had been fired as well as general information about the occupants. Soon thereafter the police located the described vehicle. Inside the residence where the vehicle was parked was the defendant along with several other individuals. As the police approached Mr. Fullerton, in plain view of the officer, he dropped six spent bullets onto a dresser. Located under the mattresses of the bed in the exact location where the defendant had been seated was the firearm. All of the circumstances, now argued by the defendant to suggest that the defendant lacked knowledge or control of the weapon, were brought to the attention of the jury. The jury was not convinced by those arguments, and the Court cannot find that this decision is unreasonable or against the weight of evidence in the case.

Regarding the Motion for New Trial, the defendant now argues that the State, in its closing arguments, inappropriately used the Court's ruling allowing the State to explain why the officer responded to this area, which caused the defendant to be prejudiced by the conduct. Prior to the trial, at the request of counsel to the defendant, the Court heard from the parties concerning how they would initially present the circumstances surrounding the complaint to the jury. While the Court prevented the State from setting forth in detail the information received from the victim (the victim was not going to testify), it did allow the State to present evidence to establish that the police had responded to this area as a result of a complaint of shots being fired. Consistent with the Court's ruling, details concerning what the victim had stated to the police were not presented to the jury and the jury was simply told that the police responded to a "shots fired" complaint and obtained a description of the vehicle and its occupants. The defense now complains that the State in its closing argument inappropriately connected the shots fired complaint to the weapon seized from the defendant's location. The Court finds that the State's argument regarding this matter was appropriate and did not violate the Court's order. The State in its closing argument argued to the jury that there was an appropriate inference between the complaint received by the police of "shots fired" and the discovery of the vehicle at the defendant's location which provided the police a reasonable basis to connect the defendant to the gun and the six spent bullets. This was not only a reasonable inference but was an appropriate argument when the defendant is arguing that he had no knowledge of the weapon which formed the basis of the charge for which he was convicted. The defendant was not tried for shooting at the residence but this information was relevant for the jury to consider as to the reasonableness and credibility of the defendant's argument that he did not possess the weapon.

Pursuant to Superior Court Criminal Rule 33, a new trial may be granted if the interest of justice so requires. "The words 'in the interest of justice' allude to the constitutional due process protections all defendants enjoy."¹ This includes a prosecutor's conduct and statements during a closing argument.² If an alleged prosecutorial error occurred within a closing argument, the Court partakes in a two-part analysis to determine whether a new trial is required.³ First, the Court must determine if the remarks made by the prosecutor were improper, and secondly, the Court must decide if those improper remarks prejudiced the rights of the defendant.⁴

¹*State v. Savage*, 2002 WL 187510 (Del. Super. Ct.), at *1. (citations omitted).

²*Id.*

³*Id.* at *4.

⁴*Id.*

Here, the Court has determined the remarks made by the State in closing argument were appropriate, and accordingly, the interest of justice does not require a new trial since the defendant was not prejudiced by the State's proper comments.

Further, it is at the discretion of the Court after viewing the evidence in the light most favorable to the State, that a new trial be granted if the jury verdict is against the weight of the evidence.⁵ While defense counsel is very good, he cannot always overcome the stupidity of his client in dropping six spent casings in front of the police and for sitting on top of a gun he was prohibited from possessing. The arguments that the weapon may have been someone else's was just not believable. And, since the jury verdict is not against the weight of the evidence, as the Court indicated above, a new trial is not warranted.

As a result, the Defendant's Motion for New Trial is also denied.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.

WCCjr:twp

cc: Prothonotary

⁵*State v. Perkins*, 2005 WL 3007807 (Del. Super. Ct.), at * 1; see also *State v. Rebarchak*, 2002 WL 1587855 (Del. Super. Ct.), at * 1. (“[A] motion for new trial will not be granted if there was some probative evidence upon which a verdict of guilty could reasonably be based. . . . [T]his Court must exercise its discretion and refrain from granting the motion unless the jury issues a verdict which appears to be against the great weight of the evidence. The evidence is to be viewed in the light most favorable to the State.”) (citations omitted).